

AMENDED IN ASSEMBLY MARCH 15, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 60

Introduced by Assembly Member Knox

December 7, 1998

An act to amend ~~Section 510~~ *Sections 510, 554, 556, and 1182.3* of, to add Sections 511, 512, 513, 514, 515, and 557 to, and to repeal ~~Section~~ *Sections 1182.2, 1182.9, 1182.10, and 1183.5* of, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 60, as amended, Knox. Employment: overtime.

Existing law provides that 8 hours of labor constitute a day's work unless it is otherwise expressly stipulated by the parties to a contract.

This bill would delete the authority of parties to a contract to otherwise expressly stipulate the number of hours that constitute a day's work. The bill would provide that, except for an employee working pursuant to an alternative workweek schedule, hours worked in excess of 8 hours in one day *and 40 hours in one workweek* are to be compensated at the rate of 1 and $\frac{1}{2}$ times the regular rate of pay of an employee, and hours worked in excess of 12 hours in one day *and 8 hours on the 7th day of a workweek* are to be compensated at the rate of twice the regular rate of pay of an employee. *Employees working pursuant to an alternative workweek schedule under a collective bargaining agreement under other provisions of this bill would be exempt from these requirements.*

This bill would make an employer, or other person acting on behalf of an employer, subject to prescribed civil penalties for the payment of a wage to an employee that is in violation of the requirement to pay for overtime work established by the bill. The bill would authorize the Labor Commissioner to issue citations for violations of the bill's provisions and would prescribe a procedure by which the cited employer or other person may contest the proposed assessment of a civil penalty.

Under an existing statute, any employer who intends to use a flexible scheduling technique, as permitted by wage order of the commission, is required to make full written disclosure to the affected employees concerning certain matters of the flexible schedule, as specified. Existing wage orders of the commission specify the rate of overtime compensation required to be paid to an employee for work in excess of 40 hours per week. Other existing provisions of those wage orders provide that no employer is in violation of those overtime provisions if the employees of the employer have adopted a voluntary written agreement that satisfies specified criteria.

This bill would repeal that statute and instead codify the authority of the employees of an employer to adopt an alternative workweek schedule that permits work by affected employees for *no longer than* 10 hours per day without the payment to the affected employees of an overtime rate of compensation, *as specified*. The bill would provide that an employee working pursuant to an alternative workweek schedule is required to be paid an overtime rate of compensation of 1 and $\frac{1}{2}$ the regular rate of pay of the employee for work in excess of ~~10 hours per day~~ *the regular hours established by that schedule beyond 8 hours a day and up to 12 hours in a workday and for work in a workweek in excess of 40 hours per week* and an overtime rate of compensation of double the regular rate of pay of the employee for any work in excess of 12 hours per day *and work in excess of 8 hours on days worked beyond the regularly scheduled workweek under the agreement*.

The bill would specify the procedures for the submission to the employees by the employer of the proposal to adopt the alternative workweek schedule. The bill also would authorize

the affected employees to vote to repeal an adopted or existing alternative workweek schedule. The bill would establish the procedures for conducting a secret ballot election to adopt or repeal an alternative workweek schedule.

Existing wage orders of the commission prohibit an employer from employing an employee for a work period of more than 5 hours per day without providing the employee with a meal period of not less than 30 minutes, with the exception that if the total work period per day of the employee is no more than 6 hours, the meal period may be waived by mutual consent of both the employer and employee.

This bill would codify that prohibition and also would further prohibit an employer from employing an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes *with a specified exception*.

The bill would provide that, if an employer approves the written request of an employee to make up work time that is lost as a result of a personal obligation of the employee, the first 4 hours of that makeup work, if performed in the same workweek in which the time was lost, may not be counted towards computing the total number of hours worked in a day for purposes of specified overtime requirements.

Existing wage orders of the commission provide that no person employed in an administrative, executive, or professional capacity is required by those wage orders to be compensated for overtime work. Those existing wage orders define an employee as employed in an administrative, executive, or professional capacity if, among other things, the employee is engaged in work that is primarily intellectual, managerial, or creative, and which requires exercise of discretion and independent judgment and the employee receives compensation of not less than a specified amount per month.

This bill would ~~increase the monthly compensation amount that an employee would be required to receive in order to qualify as an administrative, executive, or professional and would codify that exception from the overtime requirements~~ authorize the Industrial Welfare Commission to establish

exemptions, with specified limitations, from the requirement that premium pay be paid for overtime work for executive, administrative, professional, and other classes of salaried employees, provided that the employee is primarily engaged in the duties which meet the test of the exemption and the employee earns a monthly salary equivalent to no less than 3 times the state minimum wage for full-time employment. These provisions would state that they would not prohibit the commission from eliminating or modifying the exemptions that it has established but would prohibit the commission from establishing new exemptions for classes of employees or expanding existing exemptions after July 1, 2000.

Under existing law, employment in which the hours of work do not exceed 30 hours in a week or 6 hours in a day are exempt from the general provisions of the Labor Code relating to the hours and days that constitute a workday and a workweek, and related provisions.

This bill would limit that exemption to the above provisions relating to the establishment of alternative workweeks and the requirements with respect to meal periods.

Existing provisions of the Labor Code contain specific workday and workweek requirements relating to employees of ski establishments, employees of licensed hospitals, and stable employees engaged in the raising, feeding, or management of racehorses.

This bill would repeal those provisions.

The bill also would require the Industrial Welfare Commission, at a public meeting, to adopt wage, hours, and working conditions orders consistent with this measure without convening wage boards, which orders shall be final and conclusive for all purposes. Additionally, the commission would be authorized to adopt regulations consistent with this measure necessary to provide assurances of fairness regarding the conduct of employee workweek elections, employee disclosures, employee requests to the Labor Commissioner to review designations of work units, and processing of employee petitions as provided for in this measure or under any wage order of the commission.



Since violation of these provisions would, under existing law, constitute a misdemeanor, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known and may be cited
2 as the “Eight-Hour-Day ~~Preservation~~ Restoration and
3 Workplace Flexibility Act of 1999.”

4 SEC. 2. The Legislature hereby finds and declares all
5 of the following:

6 (a) The eight-hour workday is the mainstay of
7 protection for California’s working people, and has been
8 for over 80 years.

9 (b) In 1911, California enacted the first daily overtime
10 law setting the eight-hour daily standard, long before the
11 federal government enacted overtime protections for
12 workers.

13 (c) Without the eight-hour limitation, many
14 employers would lengthen the workday to 12 or more
15 hours, resulting in extreme fatigue and stress to workers.

16 (d) Ending daily overtime would result in a substantial
17 pay cut for California workers who currently receive
18 daily overtime.

19 (e) Numerous studies have linked long work hours to
20 increased rates of accident and injury.

21 (f) Family life suffers when either or both parents are
22 kept away from home for an extended period of time on
23 a daily basis.

24 (g) In 1998 the Industrial Welfare Commission
25 adopted wage orders that deleted the requirement to pay

1 premium wages after eight hours of work a day in five
2 wage orders regulating eight million workers.

3 (h) Therefore, the Legislature affirms the importance
4 of the eight-hour workday, declares that it should be
5 protected, and reaffirms the state's unwavering
6 commitment to upholding the eight-hour workday as a
7 fundamental protection for working people.

8 SEC. 3. Section 500 is added to the Labor Code, to
9 read:

10 500. For purposes of this chapter, the following terms
11 shall have the following meanings:

12 (a) "Workday" means any consecutive 24-hour period
13 commencing at the same time each calendar day.

14 (b) "Workweek" means any seven consecutive days,
15 starting with the same calendar day each week.
16 "Workweek" is a fixed and regularly recurring period of
17 168 hours, seven consecutive 24-hour periods.

18 (c) "Alternative workweek schedule" means any
19 regularly scheduled workweek requiring an employee to
20 work more than eight hours in a 24-hour period.

21 SEC. 4. Section 510 of the Labor Code is amended to
22 read:

23 510. (a) Eight hours of labor constitutes a day's work
24 ~~and hours worked in excess of eight.~~ Any work in excess
25 of eight hours in one ~~day~~ workday and any work in excess
26 of 40 hours in any one workweek shall be compensated at
27 the rate of one and one-half times the regular rate of pay
28 of an employee, and hours worked in excess of 12 hours
29 in one day and any work in excess of 40 hours in any one
30 workweek shall be compensated at the rate of twice the
31 regular rate of pay of an employee. The requirements of
32 ~~this subdivision~~ section do not apply to the payment of
33 overtime compensation to an ~~employee working~~
34 ~~pursuant to an alternative workweek schedule adopted~~
35 ~~pursuant to Section 511.~~ employee working pursuant to
36 either of the following:

37 (1) An alternative workweek schedule adopted
38 pursuant to Section 511.

1 (2) *An alternative workweek schedule adopted*
2 *pursuant to a collective bargaining agreement pursuant*
3 *to Section 514.*

4 (b) Time spent commuting to and from the first place
5 at which an employee's presence is required by the
6 employer shall not be considered to be a part of a day's
7 work, when the employee commutes in a vehicle that is
8 owned, leased, or subsidized by the employer and is used
9 for the purpose of ridesharing, as defined in Section 522
10 of the Vehicle Code.

11 (c) This section does not affect, change, or limit an
12 employer's liability under the workers' compensation
13 law.

14 ~~SEC. 4.~~

15 *SEC. 5.* Section 511 is added to the Labor Code, to
16 read:

17 ~~511. (a) The employees of an employer may adopt an~~
18 ~~alternative workweek schedule that authorizes work by~~
19 ~~the affected employees for 10 hours per day without the~~
20 ~~payment to the affected employees of an overtime rate~~
21 ~~of compensation pursuant to this section. An affected~~
22 ~~employee working pursuant to an alternative workweek~~
23 ~~schedule adopted pursuant to this section shall be paid an~~
24 ~~overtime rate of compensation of one and one-half times~~
25 ~~the regular rate of pay of the employee for any work in~~
26 ~~excess of 10 hours per day and an overtime rate of~~
27 ~~compensation of double the regular rate of pay of the~~
28 ~~employee for any work in excess of 12 hours per day.~~

29 ~~(b) (1) An employer may submit a proposal seeking~~
30 ~~the adoption of an alternative workweek schedule no~~
31 ~~more than once every 12 months to the same group of~~
32 ~~affected employees. At least 10 days prior to the election~~
33 ~~on the proposal, the employer shall provide each affected~~
34 ~~employee with a written disclosure of the effects of the~~
35 ~~adoption of the proposal on the wages, hours, and benefits~~
36 ~~of the employee, and on the right of employees to repeal~~
37 ~~the proposal. This written disclosure shall be distributed~~
38 ~~at a meeting held during the regular work hours and at~~
39 ~~the jobsite of the affected employees. An employer shall~~
40 ~~provide that disclosure in a non-English language, as well~~

~~1 as in English, if at least 5 percent of the affected
2 employees primarily speak that non-English language.
3 The failure by the employer to distribute this written
4 disclosure at the meeting renders the adoption of the
5 proposal null and void. A proposal to adopt an alternative
6 workweek schedule shall receive approval by at least
7 two-thirds of the affected employees in order to be
8 deemed adopted.~~

~~9 (2) Upon the submission to the employer of a petition
10 signed by at least one-third of all affected employees
11 requesting an election to repeal an alternative workweek
12 schedule, the employer shall schedule an election to
13 permit the affected employees to vote on the proposal to
14 repeal the alternative workweek schedule. The election
15 shall be held not less than 12 months after the date that
16 the same group of employees voted in an election held to
17 adopt or repeal an alternative workweek schedule. The
18 election to repeal an alternative workweek schedule shall
19 be held not more than 30 days after the petition is
20 submitted to the employer. A proposal to repeal an
21 alternative workweek schedule shall receive approval by
22 at least a majority of the affected employees in order to
23 be deemed repealed.~~

~~24 (3)–~~

*511. (a) Upon the proposal of an employer, the
26 employees of an employer may adopt a regularly
27 scheduled alternative workweek that authorizes work by
28 the affected employees for no longer than 10 hours per
29 day without the payment to the affected employees of an
30 overtime rate of compensation pursuant to this section.
31 The regularly scheduled alternative workweek proposed
32 by an employer for adoption by employees may be a
33 single work schedule that would become the standard
34 schedule for workers in the work unit, or a menu of work
35 schedule options, from which each employee in the unit
36 would be entitled to choose. An affected employee
37 working pursuant to an alternative workweek schedule
38 adopted pursuant to this section shall be paid an overtime
39 rate of compensation of one and one-half times the
40 regular rate of pay of the employee for any work in excess*

1 of the regularly scheduled hours established by the
2 alternative workweek agreement beyond eight hours in
3 a day up to 12 hours in a workday and for any work in
4 excess of 40 hours per week, and an overtime rate of
5 compensation of double the regular rate of pay of the
6 employee for any work in excess of 12 hours per day and
7 for any work in excess of eight hours on those days worked
8 beyond the regularly scheduled workdays established by
9 the alternative workweek agreement.

10 (b) (1) An employer may submit a proposal seeking
11 the adoption of an alternative workweek schedule to the
12 employees no more than once every 12 months to the
13 same work unit of affected employees. A proposal to
14 adopt an alternative workweek schedule shall be deemed
15 adopted only if it receives approval by at least two-thirds
16 of all affected employees in the work unit.

17 (2) Upon the submission to the employer of a petition
18 signed by at least one-third of all affected employees
19 requesting an election to repeal an alternative workweek
20 schedule, the employer shall schedule an election to
21 permit the affected employees to vote on the proposal to
22 repeal the alternative workweek schedule. The election
23 to repeal an alternative workweek schedule shall be held
24 not more than 30 days after the petition is submitted to
25 the employer, except that the election shall be held not
26 less than 12 months after the date that the same group of
27 employees voted in an election held to adopt or repeal an
28 alternative workweek schedule. A proposal to repeal an
29 alternative workweek schedule shall be deemed adopted
30 if it receives approval by a majority of all affected
31 employees in the work unit.

32 (3) At least 15 days prior to an election on a proposal
33 to adopt or repeal an alternative work schedule, the
34 employer shall provide each affected employee with a
35 written disclosure of the time and location of balloting,
36 the effects of the adoption of the proposal on the wages,
37 hours, and benefits of the employee, and on the right of
38 employees to repeal the proposal, the right of employees
39 to have the election conducted by a neutral party
40 pursuant to paragraph (4), and the right of employees to

1 request review by the Labor Commissioner of the
2 appropriateness of any designated work unit pursuant to
3 paragraph (6). This written disclosure shall be distributed
4 at a meeting held during the regular work hours and at
5 the jobsite of the affected employees. An employer shall
6 provide that disclosure in a non-English language, as well
7 as in English, if at least 5 percent of the affected
8 employees primarily speak that non-English language.
9 The employer shall mail the written disclosure to
10 employees who do not attend the meeting. The failure by
11 the employer to distribute this written disclosure at the
12 meeting and by mail renders the adoption of an
13 employer-proposed alternative workweek schedule null
14 and void. Failure by an employer to have an election
15 conducted following receipt of a petition to repeal an
16 alternative workweek, as provided in this section, renders
17 the alternative workweek schedule null and void.

18 (4) Only secret ballots may be cast by affected
19 employees at any election held pursuant to this section.
20 The Labor Commissioner shall maintain a list of approved
21 neutral third-party organizations with experience in
22 conducting employee elections. Upon the written
23 request by an employee to his or her employer, or to the
24 Labor Commissioner, made no later than ~~40~~ seven days
25 prior to the date set for the election, the employer shall
26 cause the election to be conducted by a neutral third
27 party who has experience in conducting employee
28 elections. Any written request made by an employee to
29 the commissioner is confidential and may not be disclosed
30 to the employer. The commissioner shall notify the
31 employer not less than five days prior to the date of the
32 election that the election is required to be conducted by
33 a neutral third party. Any election held pursuant to this
34 section shall be held during the regular work hours and
35 at the jobsite of the affected employees. The employer
36 shall bear the costs of conducting any election held
37 pursuant to this section.

38 ~~(4)~~

39 (5) Employees affected by a change in work hours
40 resulting from the adoption or repeal of an alternative

workweek schedule may not be required to work those new work hours for at least 45 days after the announcement of the final results of the election.

~~(5) For purposes of this section, “affected employees” includes all employees in a readily identifiable work unit, such as a division, department, job classification, shift, jobsite, or recognized subdivision thereof, who will be required to work the hours established by the adoption or repeal of an alternative workweek schedule. No work unit may be established by an employer solely for purposes of adopting or repealing an alternative workweek schedule. The Labor Commissioner shall review and approve or reject the designation of any work unit of affected employees by an employer if a written request is made to the commissioner by an employee of the employer at least 15 days prior to the date of the election held on the proposed adoption or repeal of an alternative workweek schedule.~~

~~(c) An employer shall make a reasonable effort to find an alternative work assignment for any affected employee who voted in an election authorized by this section and is unable to work the hours established as the result of the election. An employer is not required to make a reasonable effort to find an alternative work assignment for any employee who was hired after the date of the election. An employer shall explore any available reasonable alternative means of accommodating the religious belief or observance of an affected employee that conflicts with an adopted alternative workweek schedule, in the manner provided by subdivision (j) of Section 12940 of the Government Code.~~

~~(d) An employer may permanently repeal an alternative workweek schedule at any time due to a business necessity. An alternative workweek schedule may not be adopted for at least 12 months after it has been repealed by an employer. An alternative workweek schedule may not temporarily be suspended.~~

~~(e) The results of any election conducted pursuant to this section shall be reported by an employer to the~~

~~1 Division of Labor Standards Enforcement within 30 days
2 after the results are final. The division, annually, shall
3 prepare and issue a report by March 1, to the Legislature
4 that documents the total number of employers by
5 industry who implemented an alternative workweek
6 schedule, and the total number of affected employees
7 who adopted or repealed an alternative workweek
8 schedule, pursuant to this section during the previous
9 calendar year.~~

~~10 (f) Any type of alternative workweek schedule that is
11 authorized by this code and that was in effect on January
12 1, 1999, may be repealed by the affected employees
13 pursuant to this section.~~

*(6) No work unit may be established by an employer
solely for purposes of adopting or repealing an alternative
workweek schedule. The Labor Commissioner shall
review and approve, reject, or modify the designation of
any work unit of affected employees by an employer if a
written request is made to the commissioner by an
employee of the employer at least seven days prior to the
date of the election held on the proposed adoption or
repeal of an alternative workweek schedule. For
purposes of this section, "work unit" includes all
nonexempt employees sharing a community of interest
concerning the conditions of their employment in a
readily identifiable category work unit, such as an
employer-wide unit, a division, department, job
classification, shift, jobsite, or recognized subdivision
thereof.*

*(7) An employer shall not reduce an employee's
regular rate of hourly pay as a result of the adoption,
repeal or nullification of an alternative workweek
schedule.*

*(c) An employer shall make a reasonable effort to find
a work schedule not to exceed eight hours in a workday,
in order to accommodate any affected employee who was
eligible to vote in an election authorized by this section
and who is unable to work the alternative schedule hours
established as the result of that election. An employer
shall be permitted, but is not required, to accommodate*

1 any employee who was hired after the date of the election
2 and who is unable to work the alternative schedule
3 established as the result of that election. An employer
4 shall explore any available reasonable alternative means
5 of accommodating the religious belief or observance of an
6 affected employee that conflicts with an adopted
7 alternative workweek schedule, in the manner provided
8 by subdivision (j) of Section 12940 of the Government
9 Code.

10 (d) An employer may permanently repeal an
11 alternative workweek schedule at any time due to a
12 business necessity, provided that the employer notifies
13 affected employees at least 45 days prior to the repeal. An
14 alternative workweek schedule may not be adopted for
15 at least 12 months after it has been repealed by an
16 employer. An alternative workweek schedule may not
17 temporarily be suspended.

18 (e) The results of any election conducted pursuant to
19 this section shall be reported by an employer to the
20 Division of Labor Statistics and Research within 30 days
21 after the results are final. The Division annually shall
22 prepare and issue a report by March 1 to the Legislature
23 that documents the total number of employers by
24 industry who implemented and repealed an alternative
25 workweek schedule, and the total number of affected
26 employees who adopted and repealed an alternative
27 workweek schedule, pursuant to this section during the
28 previous calendar year.

29 (f) Any type of alternative workweek schedule that is
30 authorized by this code and that was in effect on January
31 1, 2000, may be repealed by the affected employees
32 pursuant to this section. Any alternative workweek
33 schedule that was adopted pursuant to Wage Order
34 Numbers 1, 4, 5, 7, or 9 of the Industrial Welfare
35 Commission is null and void, except for an alternative
36 workweek providing for a regular schedule of no more
37 than 10 hours' work in a workday that was adopted by a
38 two-thirds vote of affected employees in a secret ballot
39 election pursuant to wage orders of the Industrial Welfare
40 Commission in effect prior to 1998.

1 ~~SEC. 5.~~

2 ~~SEC. 6.~~ Section 512 is added to the Labor Code, to
3 read:

4 512. An employer may not employ an employee for a
5 work period of more than five hours per day without
6 providing the employee with a meal period of not less
7 than 30 minutes, except that if the total work period per
8 day of the employee is no more than six hours, the meal
9 period may be waived by mutual consent of both the
10 employer and employee. An employer may not employ
11 an employee for a work period of more than 10 hours per
12 day without providing the employee with a second meal
13 period of not less than 30 minutes, *except that if the total*
14 *hours worked is no more than 12 hours, the second meal*
15 *period may be waived by mutual consent of the employer*
16 *and the employee only if the first meal period was not*
17 *waived.*

18 ~~SEC. 6.~~

19 ~~SEC. 7.~~ Section 513 is added to the Labor Code, to
20 read:

21 513. If an employer approves the written request of
22 an employee to make up work time that is lost as a result
23 of a personal obligation of the employee, the first four
24 hours of that makeup work, if performed in the same
25 workweek in which the work time was lost, may not be
26 counted towards computing the total number of hours
27 worked in a day for purposes of the overtime
28 ~~requirements specified in subdivision (a) of Section 510.~~
29 *requirements specified in Section 510 or 511.*

30 ~~SEC. 7.~~ Section 514 is added to the Labor Code, to
31 read:

32 514. (a) ~~A person employed in an administrative,~~
33 ~~executive, or professional capacity is not required under~~
34 ~~state law to be compensated for overtime work.~~

35 (b) ~~For purposes of this section, a person is defined to~~
36 ~~be employed in an administrative, executive, or~~
37 ~~professional capacity only if either of the following~~
38 ~~criteria apply:~~

39 (1) ~~The employee is engaged in work that is primarily~~
40 ~~intellectual, managerial, or creative, and which requires~~

~~the exercise of discretion and independent judgment and the employee receives compensation of not less than two thousand dollars (\$2,000) per month.~~

~~(2) The employee is licensed or certified by the State of California to engage in either one of the following types of work:~~

~~(A) Law, medicine, dentistry, pharmacy, optometry, architecture, engineering, teaching, or accounting.~~

~~(B) Work commonly recognized as being performed by a person in a learned or artistic profession.~~

~~(c) A person employed as a registered nurse does not qualify as being employed in an administrative, executive, or professional capacity pursuant to paragraph (2) of subdivision (b). However, a person employed as a registered nurse may qualify as being employed in an administrative, executive, or professional capacity if he or she otherwise meets the criteria specified in paragraph (1) of subdivision (a).~~

~~SEC. 8. Section 557 is added to the Labor Code, to read:~~

~~557. (a) Any employer or other person acting on behalf of an employer who pays or causes to be paid to any employee a wage for overtime work in violation of subdivision (a) of Section 510 or subdivision (a) of Section 511 shall be subject to a civil penalty as follows:~~

~~(1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid.~~

~~(2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid.~~

~~(b) If upon inspection or investigation, the Labor Commissioner determines that a person had paid or caused to be paid a wage for overtime work in violation of subdivision (a) of Section 510 or subdivision (a) of Section 511, the Labor Commissioner may issue a citation to the person. The citation may be served personally or by registered mail in accordance with subdivision (c) of Section 11505 of the Government Code. Each citation shall be in writing and shall describe the nature of the~~

1 violation, including reference to the statutory provision
2 or provisions alleged to have been violated.

3 (e) If a person desires to contest a citation or the
4 proposed assessment of a civil penalty therefor, the
5 person shall, within 15 business days after service of the
6 citation, notify the office of the Labor Commissioner
7 which appears on the citation of his or her request for
8 informal hearing. The Labor Commissioner or his or her
9 deputy or agent shall, within 30 days, hold a hearing at the
10 conclusion of which the citation or proposed assessment
11 of a civil penalty shall be affirmed, modified, or dismissed.
12 If the person receiving the citation does not request a
13 hearing with the Labor Commissioner within the
14 prescribed time, the proposed civil penalty shall be
15 deemed a final order of the Labor Commissioner and shall
16 not be subject to further administrative review. The
17 determination of the Labor Commissioner after the
18 conclusion of the hearing shall be deemed the final order
19 of the Labor Commissioner and shall not be subject to
20 further administrative review.

21 The Labor Commissioner shall promptly take all
22 appropriate action to enforce the citation and recover the
23 civil penalty prescribed thereon or found to be due after
24 a hearing. The Labor Commissioner may maintain an
25 action in any court of competent jurisdiction to recover
26 the amount of civil penalties found to be due.

27 A person to whom a citation has been issued may, in lieu
28 of contesting a citation pursuant to this section, transmit
29 to the office of the Labor Commissioner designated on
30 the citation the amount specified for the violation within
31 15 business days after issuance of the citation.

32 (d) The civil penalties provided for in this section are
33 in addition to any other civil or criminal penalty provided
34 by law.

35 SEC. 9. Section 1183.5 of the Labor Code is repealed.

36 SEC. 10. The Division of Labor Standards
37 Enforcement shall implement the provisions of this act
38 within its existing budget.

39 SEC. 11. No reimbursement is required by this act
40 pursuant to Section 6 of Article XIII B of the California

~~Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.~~

~~Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.~~

SEC. 8. *Section 514 is added to the Labor Code, to read:*

514. This chapter does not apply to an employee covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of the employees, and if the agreement provides premium wage rates for all overtime hours worked and an hourly cash wage rate for those employees of not less than 30 percent more than the state minimum wage.

SEC. 9. *Section 515 is added to the Labor Code, to read:*

515. (a) The Industrial Welfare Commission may establish exemptions from the requirement that an overtime rate of compensation be paid for work in excess of eight hours per day for executive, administrative, professional, and other classes of salaried employees, provided that the employee is primarily engaged in the duties which meet the test of the exemption and the employee earns a monthly salary equivalent to no less than three times the state minimum wage for full-time employment. However, this section does not prohibit the commission from eliminating or modifying the exemptions that it has established.

(b) The Industrial Welfare Commission may not establish new exemptions for classes of employees or expand existing exemptions after July 1, 2000.

1 (c) For the purposes of this section “full-time
2 employment” means employment in which an employee
3 is employed for at least 40 hours per week. The calculation
4 of the employee’s salary shall exclude all hours worked in
5 excess of 40 in a workweek.

6 (d) For the purpose of computing the overtime rate of
7 compensation required to be paid to a nonexempt
8 full-time salaried employee, the employee’s regular
9 hourly rate shall be $\frac{1}{40}$ th of the employee’s weekly
10 salary.

11 (e) For the purposes of this section, “primarily” means
12 more than one-half of the employee’s work time.

13 (f) In addition to the requirements of subdivision (a),
14 licensed pharmacists employed to engage in the practice
15 of pharmacy and registered nurses employed to engage
16 in the practice of nursing shall not be exempted from
17 coverage under any part of the orders of the Industrial
18 Welfare Commission, unless they individually meet the
19 criteria for exemptions established for executive,
20 administrative, or professional employees.

21 (g) In addition to the requirements of subdivision (a),
22 persons employed as outside salespersons shall not be
23 exempted from coverage under any part of the orders of
24 the Industrial Welfare Commission unless they
25 customarily and regularly spend more than one-half of
26 their work time away from the employer’s place of
27 business, and are paid on a salary or commission basis, and
28 whose duties require that more than 70 percent of their
29 actual work time be devoted to sales of products or
30 services. The delivery of products or performance of
31 services, such as stocking of shelves, shall not be
32 considered sales within the meaning of this subdivision.

33 SEC. 10. Section 554 of the Labor Code is amended to
34 read:

35 554. ~~This chapter~~ Sections 551 and 552 shall not apply
36 to any cases of emergency nor to work performed in the
37 ~~necessary care of animals, crops or agricultural lands, nor~~
38 ~~to work performed in the~~ protection of life or property
39 from loss or destruction. ~~This chapter does not apply to~~
40 ~~work performed in the necessary care of animals, crops,~~

1 *or agricultural lands*, nor to any common carrier engaged
 2 in or connected with the movement of any train. ~~Not~~ *nor*
 3 shall the provisions of this chapter apply when the
 4 employer and a labor organization representing
 5 employees of ~~such~~ *the* employer have entered into a valid
 6 collective-bargaining agreement ~~respecting the hours of~~
 7 ~~work of such employees pursuant to Section 514.~~ Nothing
 8 in this chapter shall be construed to prevent an
 9 accumulation of days of rest when the nature of the
 10 employment reasonably requires that the employee work
 11 seven or more consecutive days, providing that in each
 12 calendar month the employee receive days of rest
 13 equivalent to one day's rest in seven. The requirement
 14 respecting the equivalent of one day's rest in seven shall
 15 apply, notwithstanding the other provisions of this section
 16 relating to collective-bargaining agreements, where the
 17 employer and a labor organization representing
 18 employees of the employer have entered into a valid
 19 collective-bargaining agreement respecting the hours of
 20 work of the employees, unless the agreement expressly
 21 provides otherwise.

22 In addition to the exceptions herein, the Chief of the
 23 Division of Labor Standards Enforcement may, when in
 24 his judgment hardship will result, exempt any employer
 25 or employees from ~~this chapter.~~ ~~Nothing contained~~
 26 ~~herein shall affect contracts existing on the effective date~~
 27 ~~of this amendment~~ *the provisions of Sections 551 and 552.*

28 *SEC. 11. Section 556 of the Labor Code is amended to*
 29 *read:*

30 556. ~~This chapter~~ *Sections 511 and 512* shall not apply
 31 to any employer or employee when the total hours of
 32 employment do not exceed 30 hours in any week or six
 33 hours in any one day thereof.

34 *SEC. 12. Section 557 is added to the Labor Code, to*
 35 *read:*

36 557. (a) *Any employer or other person acting on*
 37 *behalf of an employer who violates, or causes to be*
 38 *violated, a section of this chapter shall be subject to a civil*
 39 *penalty as follows:*

1 (1) For any initial violation, fifty dollars (\$50) for each
2 underpaid employee for each pay period for which the
3 employee was underpaid in addition to an amount
4 sufficient to recover underpaid wages.

5 (2) For each subsequent violation, one hundred
6 dollars (\$100) for each underpaid employee for each pay
7 period for which the employee was underpaid in addition
8 to an amount sufficient to recover underpaid wages.

9 (3) Wages recovered pursuant to this section shall be
10 paid to the affected employee.

11 (b) If upon inspection or investigation the Labor
12 Commissioner determines that a person had paid or
13 caused to be paid a wage for overtime work in violation
14 of any provision of this chapter, the Labor Commissioner
15 may issue a citation. The procedures for issuing,
16 contesting, and enforcing judgments for citations or civil
17 penalties issued by the Labor Commissioner for a
18 violation of this chapter shall be the same as those set out
19 in Section 1197.1.

20 (c) The civil penalties provided for in this section are
21 in addition to any other civil or criminal penalty provided
22 by law.

23 SEC. 13. Section 1182.2 of the Labor Code is repealed.

24 ~~1182.2. (a) The Legislature finds that the hours and~~
25 ~~days of work of employees employed in California in the~~
26 ~~seasonal ski industry are subject to fluctuations which are~~
27 ~~beyond the control of their employers. The Legislature~~
28 ~~further finds that the economic interests of these~~
29 ~~employees are best served when minimum limitations~~
30 ~~are placed upon their hours and days of work.~~
31 ~~Accordingly, no employer who operates a ski~~
32 ~~establishment shall be in violation of any provision of this~~
33 ~~code or any applicable order of the Industrial Welfare~~
34 ~~Commission by instituting a regularly scheduled~~
35 ~~workweek of not more than 56 hours, provided that any~~
36 ~~employee shall be compensated at a rate of not less than~~
37 ~~one and one-half times the employee's regular rate of pay~~
38 ~~for any hours worked in excess of 56 hours in any~~
39 ~~workweek.~~

~~(b) As used in this section, “ski establishment” means an integrated, geographically limited recreational area comprised of the basic skiing facilities, together with all operations and facilities related thereto.~~

~~(c) This section shall apply only during any month of the year when Alpine or Nordic skiing activities, including snowmaking and grooming activities, are actually being conducted by the ski establishment.~~

SEC. 14. Section 1182.3 of the Labor Code is amended to read:

1182.3. No employee licensed pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 of the Fish and Game Code, ~~or who is employed on a commercial passenger fishing boat licensed pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6 of the Fish and Game Code,~~ shall be subject to a minimum wage or maximum hour order of the commission.

SEC. 15. Section 1182.9 of the Labor Code is repealed.

~~1182.9. An employer engaged in the operation of a licensed hospital or providing personnel for the operation of a licensed hospital who institutes, pursuant to an applicable order of the commission, a regularly scheduled workweek that includes no more than three working days of no more than 12 hours each within any workweek, shall make a reasonable effort to find an alternative work assignment for any employee who participated in the vote which authorized the schedule and is unable to work 12-hour workday schedules. An employer shall not be required to offer an alternative work assignment to an employee if an alternative work assignment is not available or if the employee was hired after the adoption of the 12-hour, 3-day workweek schedule.~~

SEC. 16. Section 1182.10 of the Labor Code is repealed.

~~1182.10. (a) Notwithstanding any other provision of this chapter, or any order of the Industrial Welfare Commission, the employment of stable employees engaged in the raising, feeding, and management of racehorses by a trainer shall be subject to the same~~

~~standards governing wages, hours, and conditions of labor as those established by the commission for employees in agricultural occupations engaged in the raising, feeding, and management of other livestock, except as set forth in subdivision (b):~~

~~(b) Notwithstanding the provisions of any order of the commission permitting employees employed in agricultural occupations to work 10 hours on each of six workdays in a seven day workweek without the payment of overtime compensation, stable employees shall not be employed more than 10 hours in any workday, nor more than 56 hours during seven days in any workweek. However, stable employees may be employed in excess of 10 hours in any workday, and in excess of 56 hours during seven days in one workweek, if these employees are compensated at a rate of not less than one and one-half times the employees' regular rate of pay for all hours worked in excess of 10 hours in any workday, or 56 hours in any workweek.~~

~~(c) For purposes of this section:~~

~~(1) "Stable employees" includes, but is not limited to, grooms, hotwalkers, exercise workers, and any other employees engaged in the raising, feeding, or management of racehorses, employed by a trainer at a racetrack or other nonfarm training facility.~~

~~(2) "Trainer" has the same definition as in Section 24001 of the Food and Agricultural Code.~~

~~(3) "Workday" and "workweek" have the same definition as in the order of the commission applicable to employees employed in agricultural occupations.~~

~~(4) "Regular rate of pay" includes all wages paid by the trainer to the stable employee for a workweek of not more than 56 hours, but excludes those amounts excluded from regular pay by Section 7(c) of the Fair Labor Standards Act (29 U.S.C. Sec. 207(c)), and excludes the payment of the stable employee's share, if any, of the purse of a race, whether that share is paid by the owner of the racehorse or by the trainer.~~

SEC. 17. Section 1183.5 of the Labor Code is repealed.

~~1183.5. (a) Any employer who intends to use a flexible scheduling technique, as permitted by an order of the Industrial Welfare Commission, requiring a vote of the affected employees shall make a full disclosure in writing to each of the affected employees. The notice shall include the effects of the proposed scheduling, including the employees' wages, hours, and benefits. The employer shall not be required to distribute the notice to employees on a leave of absence for any cause.~~

~~(b) Within the health care industry, the disclosure shall include meetings, duly noticed, for the specific purpose of discussing the effects of flexible scheduling.~~

~~(c) Failure to comply with this section shall make the election null and void.~~

SEC. 18. The Industrial Welfare Commission shall, at a public meeting, adopt wage, hours, and working conditions orders consistent with this measure without convening wage boards, which orders shall be final and conclusive for all purposes.

SEC. 19. The Industrial Welfare Commission may adopt regulations consistent with this chapter necessary to provide assurances of fairness regarding the conduct of employee workweek elections, employee disclosures, employee requests to the Labor Commissioner to review designations of work units, and processing of employee petitions as provided for in this chapter or in any wage order of the commission.

SEC. 20. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.